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**OFFICE OF PETITIONS**

In re Patent No. 7,140,865 :  
Issued: November 28, 2006 :  
Application No. 10/063,185 : PATENT TERM ADJUSTMENT  
Filed: March 28, 2002 :  
Dkt. No.: 70254-346 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154 AND 37 C.F.R. § 1.705(D)," filed January 16, 2007.

The application for patent term adjustment ("PTA") under 37 C.F.R. § 1.705(d) is **DISMISSED**.

Patentees request that the Determination of Patent Term Adjustment be corrected from 607 days to 910 days.

An overall adjustment of 610 days can be attributed to the Office. Specifically, an adjustment of 303 days under 37 CFR 1.702(a)(1), an adjustment of 41 days under 37 CFR 1.702(a)(2), and an adjustment of 266 days under 37 CFR 1.702(b) can be attributed to the Office.

The adjustment of 610 days is reduced a total of three days for patentees failure to engage in reasonable efforts to conclude prosecution. A reduction of two days under 37 CFR 1.704(b) and an adjustment of one day under 37 CFR 1.704(c)(8) can be attributed to patentees.

Patentees argue that the patent is entitled to further adjustment for the Office's failure to issue the patent within three years from the date upon which the application was filed.

If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B) (and 37 C.F.R. § 1.704(b)), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the


application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the application that overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See, 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Red. Reg. 21704 (April 22, 2004).

In view thereof, at the time of issuance, the patent was entitled to an adjustment of 607 days, as indicated thereon.

Any request for reconsideration of this decision must be submitted within two months of the mail date of the instant decision. The time period for reconsideration may not be extended pursuant to 37 CFR 1.136.

The Office acknowledges receipt of the required fee of \$200.00 for an application for patent term adjustment.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

  
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